

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 141 OF 2017

Balaji Ramrao Dumne ...Applicant
Versus
State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 95 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 141 OF 2017

Smt. Anita Vikas Pansare ...Applicant
(Orig.Complainant)

In the matter between

Balaji Ramrao Dumne ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 150 OF 2017

Dhananjay Rambhau Aundhekar ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 94 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 150 OF 2017

Smt.Anita Vikas Pansare ...Applicant
(Orig.Complainant)

In the matter between

Dhananjay Rambhau Aundhekar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.Aabad Ponda a/w Mr.Samsher Garud and Mr.Santosh Avhad i/b. Jayakar & Partners for the Applicant in ABA No. 141 of 2017.

Mr.Aniket Nikam for the Applicant in ABA No.150 of 2017.

Mr.S.S.Hulke, APP for the State-Respondent in ABA No. 141 of 2017.

Mr.Rajan Salvi, APP for the State-Respondent in ABA No.150 of 2017.

Mr.Prashant S. Hagare for the Intervener in Criminal Application Nos. 94 of 2017 and 95 of 2017.

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CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 2nd February 2017

P.C.:

1. These applications are moved by the applicants-accused for pre-arrest bail under section 438 of the Cr.P.C. The applicants-accused are prosecuted for offence punishable under section 306 r/w 34 of the Indian Penal Code in C.R.No. 6 of 2017 registered with Mohol Police Station, Solapur. The offence is registered at the instance of Smt. Anita Vikas Pansare, wife of the deceased.

2. It is the case of the prosecution that the deceased Vikas Pansare was working as a Dy. Executive Engineer in M.S.E.B. at Mohol. He took charge on 19.08.2016. He was harassed by his seniors especially the applicants-accused Balaji Dumne and Dhananjay Aundhekar, who were working as Superintendent Engineers in the said department. On 04.12.2016, he expressed that he did not want to work there because of these persons. Thereafter, he came to Pune and stayed with his wife from 17.12.2016 to 27.12.2016 and complained about these two officers. He informed her that he was under mental pressure

and was not ready to join the services, because of his seniors. On 27.12.2016, he left Pune for attending the duty and at that time, he communicated to the applicant-accused Balaji Dumne that he wanted to come and join the duty. He reached Solapur and he met his seniors on 27.12.2016. It is the case of the prosecution that Shri Nagnath Ervadkar, Chief Engineer has directed these applicants-accused to allow the deceased Vikas Pansare to attend the duty on the next day. On 28.12.2016, the deceased Vikas Pansare came to the office. However, the applicants-accused did not allow him to join the duties and told him to clear the financial matters and insulted him. Therefore, he went home and committed suicide by hanging himself on 29.12.2016 at around 2.30 p.m. After 4 to 5 days, the complainant-wife approached the police and gave information, and the offence was registered. Thereafter, these applicants-accused have moved these applications.

3. The learned counsel for the applicants-accused submits that they have not committed any offence of abetment as per section 306 of the Indian Penal Code. The learned counsel submits that earlier, the deceased had faced departmental enquiry and he was held guilty in the said enquiry. Thereafter, by order dated 13.12.2016 the appellate authority i.e. Regional Director/Competent Authority had confirmed the decision in the enquiry and dismissed the appeal. It is submitted that the deceased did not join his duty for about 10 days before he

committed suicide. It is further argued that the applicant-accused Balaji Dumne had sent a letter on 22.12.2016 directing him to join the duty, as he was on leave without intimation. The learned counsel has submitted that abetment of a thing as required under section 107 of the Indian Penal Code is not found in this case. In support of his submission, the learned counsel relied on the judgments in *Mahendra Singh and Another Gayatribai vs. State of M.P.*, reported in *1995 Supp (3) SCC 731*, and *Gangula Mohan Reddy vs. State of Andhra Pradesh*, reported in *(2010) 1 SCC 750*.

4. The learned prosecutor while opposing the application has submitted that the applicants-accused used to harass the deceased and though they were directed by the Chief Engineer to allow the deceased Vikas Pansare to join the duty, they did not allow him to work on 28.12.2016. The learned prosecutor further submitted that on a number of occasions, the deceased had complained about torture and harassment at the hands of the applicants-accused from August 2016 till December 2016. It is submitted that there are specific allegations against the applicants-accused and in the complaint, the wife of the deceased has incorporated all the details. It is further submitted that they have relied on the statements of the employees of M.S.E.B., wherein they have stated that on 27.12. 2016 at 10.00 a.m. the deceased Vikas Pansare was present in the office and the Chief Executive

Engineer had directed the applicants-accused to allow him to join. Accordingly, on 28.12.2016 the deceased Vikas Pansare went to the office to join his duty. The learned prosecutor further relied on the statements of employees, who have described the mental condition of the deceased Vikas Pansare on 28.12.2016 that he was disturbed and harassed by the applicants-accused. It is further submitted that after relying on the application dated 28.12.2016 submitted by the deceased Vikas Pansare that he wanted to join the duty, on that day no order was passed on the application by the applicants-accused though it was required. The learned prosecutor has relied on the statements of two witnesses wherein they have stated that after the death of Vikas Pansare these applicants-accused called those concerned two employees alongwith that application, and applicant-accused Balaji Dumne made an endorsement as permitted to join and told them to make ante-date entry in the inward register. The learned prosecutor submits that this is how the applicants-accused have manipulated the document. Their custody is required to get the cell phone call records, as the deceased had sent some messages to the applicant-accused Balaji Dumne. It is further submitted that the police want to record the statements of other witnesses who are not coming forward because they are under pressure of these applicants-accused.

5. Perused the F.I.R. and the statements of the witnesses which are pointed out by the learned prosecutor and so also the correspondence. It is most unfortunate incident of suicide. After going through the complaint, it appears that the deceased Vikas Pansare had suffered and tired because of these applicants-accused, who did not treat him properly at the workplace. *Prima facie*, it can be also seen that there was talk between the husband and wife about the ill treatment given by the applicants-accused at his workplace. The complainant has given the details about harassment. She has also mentioned that her husband did not attend the duties for 10 days i.e. from 17.12.2016 to 27.12.2016 and during the said period, he had stayed at Pune with her. She observed that her husband was continuously under mental pressure is also correct, as the deceased ultimately committed suicide to get rid of his mental pressure. Alongwith this fact, other facts which are brought on record by the counsel of the applicants-accused also required to be taking into account that the deceased had faced departmental enquiry and he was held guilty and punished by order dated 04.01.2016. His two annual increments were stopped. Against this order, he preferred an appeal on 04.03.2016 and on 13.12.2016, the said appeal was dismissed by the Regional Director/Competent Authority. The said order was reached to the office at Mohol on 22.12.2016. Thus, it shows that the deceased was also under mental pressure and sad because of this

result of his appeal. In the F.I.R. these details are not mentioned. There was a letter sent by the applicant-accused Balaji Dumne on 22.12.2016 i.e. on the same day when the decision of dismissal of the appeal was reached to the office. In the said letter, the applicant-accused has asked him to join the duty and also mentioned that he remained absent without permission and it is an unauthorized leave. So also, he had switched off the cell phone which was given by the company and also mentioned that failing which the company will take action against him. It appears that on 27.12.2016 the deceased Vikas Pansare attended the duty. Shri Nagnath Erwadkar, senior officer of these two applicants-accused told that let him join the duty and pursuant to that, the deceased Vikas Pansare went to join the duty on 28.12.2016. The statements of the witnesses disclosed that he was not allowed to join the duty by these applicants-accused, though it was ordered by the senior officer. As per the statements of the witnesses and the complaint, it appears that the applicants-accused asked him to clear the financial matter pertaining to outstanding of M.S.E.B. consumers, which was part of his duty and, therefore, he went home and committed suicide.

6. While dealing with section 306 of the Indian Penal Code, the Court has to consider section 107 of the Indian Penal Code which states the abetment of a thing is as under:

107. "Abetment of a thing- A person abets the doing of a thing, who -

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act".

7. Considering the contents in the F.I.R and also the statements of other witnesses, *prima facie*, I am of the view that the treatment which was received by the deceased through the applicants-accused may not constitute the offence of abetment as it does not fulfill

the ingredients of section 107 of the I.P.C. There should be mens rea that the deceased should die and no option for the person or otherwise but to commit suicide. Mind of human being is very deep and complicated, sometimes difficult to find out the correct reason of the act. In support of this, I rely on the observations of the Supreme Court in the case of ***Ramesh Kumar vs. State of Chhattisgarh***, reported in ***(2001) 9 SCC 618***.

8. Similarly, every insensitive behaviour of the applicants-accused may not fall under the definition of section 107 of the Indian Penal Code. The Hon'ble Supreme Court in the case of ***Gangula Mohan Reddy vs. State of Andhra Pradesh***, reported in ***(2010) 1 SCC 750***, has observed thus:-

16. *“This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words “instigation” and “goading”. The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the other. Each person has his own idea of self-esteem and self respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.*

17. *Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and*

the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide”.

It requires *mens rea* that the accused have desired or they took an active role to end his life.

9. The learned prosecutor also relied on the decision of the Supreme Court in the case of ***Praveen Pradhan vs. State of Uttaranchal & Anr. (Criminal Appeal No. 1589 of 2012)*** decided on 04.10.2012. In the said case, the deceased was harassed by his employer. In paragraph 3, the facts are mentioned and it is said that the accused compelled the deceased to indulge in several wrongful practices at the work place and he further started making illegal demands and as the same were not fulfilled by the deceased, the accused began to harass and insult the deceased at regular intervals and the accused has disgraced the deceased in front of the staff and told him that “had there been any other person in his place, he would have died by hanging himself” and thereafter he committed suicide. In the said case, the deceased had left a suicide note. He blamed Praveen Pradhan entirely and held him responsible for driving him to the decision of committing suicide. In the present case no such suicide note was left by the deceased and moreover the facts are distinguishable. In ***Praveen***

Pradhan it is rightly held that no straight jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide, and an inference has to be drawn from the circumstances. The applicant-accused i.e. Balaji Dumne shall hand over his cellphone in which messages sent by the deceased Vikas Pansare was received before 29.12.2016. Considering all these facts, I allow these applications.

ORDER

- (i) In the event of arrest, the applicants -accused be enlarged on bail on furnishing P.R.Bond in the sum of Rs. 30,000/- (Rupees Thirty Thousand only) each with one or two solvent sureties in the like amount.
- (ii) The applicants-accused shall attend the police station on Friday between 6.00 and 8.30 p.m. and on Saturday and Sunday between 11.00 a.m. and 1.00 p.m. till 13th February 2017, and thereafter, as and when called by the police authorities.

10. Anticipatory Bail Applications are disposed of accordingly.

11. In view of the order passed in Criminal Anticipatory Bail Application Nos. 141 of 2017 and 150 of 2017, Criminal Application Nos. 95 of 2017 and 94 of 2017 do not survive and the same stand disposed of.

(MRIDULA BHATKAR, J.)